

Department of Defense

DoDD 4400.1, Defense Production Act Programs.

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PART 212—ACQUISITION OF COMMERCIAL ITEMS

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AUTHORITY: 41 U.S.C. 421 and 48 CFR Chapter 1.

SOURCE: 60 FR 61595, Nov. 30, 1995, unless otherwise noted.

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Subpart 212.2—Special Require- ments for the Acquisition of Commercial Items

212.211 Technical data.

The DoD policy for acquiring technical data for commercial items is at 227.7102.

212.212 Computer software.

The DoD policy for acquiring commercial computer software is at 227.7202.

[69 FR 63330, Nov. 1, 2004]

Subpart 212.3—Solicitation Provi- sions and Contract Clauses for the Acquisition of Com- mercial Items

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f)(i) Use one of the following provisions as prescribed in part 225:

(A) 252.225-7000, Buy American Act—Balance of Payments Program Certificate.

(B) 252.225-7020, Trade Agreements Certificate.

(C) 252.225-7035, Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate.

(ii) Use the provision at 252.212-7000, Offeror Representations and Certifications—Commercial Items, in all solicitations for commercial items exceeding the simplified acquisition threshold. If an exception to 10 U.S.C. 2410i applies to a solicitation exceeding the simplified acquisition threshold (see 225.770-3), indicate on an addendum that “The certification in paragraph (b) of the provision at 252.212-7000 does not apply to this solicitation.”

(iii) Use the clause at 252.212-7001, Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items, in all solicitations and contracts for commercial items, completing paragraphs (a) and (b), as appropriate.

(iv) Use the provision at 252.209-7001, Disclosure of Ownership or Control by the Government of a Terrorist Country, as prescribed in 209.104-70(a).

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(v) Use the clause at 252.232-7009, Mandatory Payment by Governmentwide Commercial Purchase Card, as prescribed in 232.1110.

(3) A contracting officer supporting a contingency operation as defined in 10 U.S.C. 101(a)(13) or a humanitarian or peacekeeping operation as defined in 10 U.S.C. 2302(8) also may use the Governmentwide commercial purchase card to make a purchase that exceeds the micro-purchase threshold but does not exceed the simplified acquisition threshold, if:

(i) The supplies or services being purchased are immediately available;

(ii) One delivery and one payment will be made; and

(iii) The requirements of paragraphs (2)(i) and (ii) of this section are met.

(vi) Use the clause at 252.211-7003, Item Identification, as prescribed at 211.274-4.

(vii) Use the clause at 252.225-7040, Contractor Personnel Supporting a Force Deployed Outside the United States, as prescribed in 225.7402-4.

(viii) Use the clause at 252.225-7043, Antiterrorism/Force Protection Policy for Defense Contractors Outside the United States, in solicitations and contracts that include the clause at 252.225-7040.

[60 FR 61595, Nov. 30, 1995, as amended at 61 FR 50452, Sept. 26, 1996; 62 FR 34122, June 24, 1997; 63 FR 11528, Mar. 9, 1998; 63 FR 15317, Mar. 31, 1998; 64 FR 8728, Feb. 23, 1999; 64 FR 43101, Aug. 9, 1999; 65 FR 46625, July 31, 2000; 66 FR 49861, Oct. 1, 2001; 66 FR 55122, 55123, Nov. 1, 2001; 68 FR 7439, Feb. 14, 2003; 68 FR 15618, Mar. 31, 2003; 68 FR 58633, Oct. 10, 2003; 68 FR 75200, Dec. 30, 2003; 68 FR 64558, Nov. 14, 2003; 69 FR 1927, Jan. 13, 2004; 70 FR 20836, Apr. 22, 2005; 70 FR 23801, May 5, 2005]

EFFECTIVE DATE NOTE: At 70 FR 53968, Sept. 13, 2005, section 212.301 was amended by removing paragraph (3) introductory text and paragraphs (3)(i) through (iii) and adding paragraph (f)(ix), effective Nov. 14, 2005. For the convenience of the user, the added text is set forth as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

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(f) * * *

(ix) Use the clause at 252.211-7006, Radio Frequency Identification, as prescribed in 211.275-3.

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212.302 Tailoring of provisions and clauses for the acquisition of commercial items.

(c) *Tailoring inconsistent with customary commercial practice.*

The head of the contracting activity is the approval authority within the DoD for waivers under FAR 12.302(c).

Subpart 212.5—Applicability of Certain Laws to the Acquisition of Commercial Items

212.503 Applicability of certain laws to Executive agency contracts for the acquisition of commercial items.

(a) The following laws are not applicable to contracts for the acquisition of commercial items:

(i) Section 806, Public Law 102-190 (10 U.S.C. 2301 (repealed) note), Payment Protections for Subcontractors and Suppliers.

(ii) 10 U.S.C. 2306(b), Prohibition on Contingent Fees.

(iii) 10 U.S.C. 2324, Allowable Costs Under Defense Contracts.

(iv) 10 U.S.C. 2384(b), Requirement to Identify Suppliers.

(v) 10 U.S.C. 2397(a)(1), Reports by Employees or Former Employees of Defense Contractors.

(vi) 10 U.S.C. 2397b(f), Limits on Employment for Former DoD Officials.

(vii) 10 U.S.C. 2397c, Defense Contractor Requirements Concerning Former DoD Officials.

(viii) 10 U.S.C. 2408(a), Prohibition on Persons Convicted of Defense Related Felonies.

(ix) 10 U.S.C. 2410b, Contractor Inventory Accounting System Standards (see 252.242-7004).

(x) 107 Stat 1720 (Section 843(a), Public Law 103-160), Reporting Requirement Regarding Dealings with Terrorist Countries.

(xi) Domestic Content Restrictions in the National Defense Appropriations Acts for Fiscal Years 1996 and Subsequent Years, unless the restriction specifically applies to commercial items. For the restriction that specifically applies to commercial ball or roller bearings as end items, see 225.7019-2(b) (Section 8064 of Public Law 106-259).

(c) The applicability of the following laws has been modified in regard to